

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Sixteenth Congress

August 6, 2019

The Hon. David S. Ferriero
Archivist of the United States
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Mr. Ferriero:

The business of the Supreme Court has profound implications for the American people and the institutions of our government. In the coming year, the Supreme Court will again address important matters regarding civil rights, criminal justice, and immigration. The Court may also review certain high-profile cases related to reproductive rights, the separation of powers, and the limits of executive authority—all topics within the jurisdiction of the House Judiciary Committee (the Committee). Now and as always, the Court's fidelity to the principles of equal and impartial justice, as well as the public's faith in the integrity of the judiciary, are foundational to maintaining the rule of law.

The Committee also exercises legislative authority, including investigative and oversight authority, with respect to “[t]he judiciary and judicial proceedings, civil and criminal,” and “federal courts and judges.”¹ The Committee's jurisdiction encompasses the laws governing judicial ethics and the judicial oath of office; judicial disqualification, and misconduct; and the organization of the Supreme Court. In that capacity, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet recently held a hearing to consider possible legislation promoting ethics, accountability, and transparency in the federal courts.² As it has in the past, the Committee is considering legislative proposals to create a code of conduct for Supreme Court Justices.³ It has also reviewed other proposals in recent years regarding transparency in the Supreme Court's proceedings, the adequacy of the Justices' financial

¹ House Rule X.1(l)(1), (8), Rules of the House of Representatives, 116th Cong. (2019).

² *The Federal Judiciary in the 21st Century: Ideas for Promoting Ethics, Accountability, and Transparency: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Courts, Intel. Prop., and the Internet*, 116th Cong. (2019), <https://judiciary.house.gov/legislation/hearings/federal-judiciary-21st-century-ideas-promoting-ethics-accountability-and>.

³ See, e.g., H.R. 1, the “For the People Act” § 7001, 116th Cong. (2019); H.R. 1057, the “Supreme Court Ethics Act,” 116th Cong. (2019); see also, e.g., H.R. 6755, the “Judiciary ROOM Act” § 201, 115th Cong. (2018); H.R. 1960, the “Supreme Court Ethics Act,” 115th Cong. (2017); H.R. 2902, the “Supreme Court Ethics Act,” 113th Cong. (2013).

disclosures, and the circumstances in which Justices or judges must disqualify themselves from cases.⁴

In light of these and other legislative and oversight responsibilities, we write to request that the National Archives complete its review of certain presidential records related to Justice Brett M. Kavanaugh's service in the White House from 2001 to 2006 and provide these records to the Committee, as provided for in 44 U.S.C. § 2205(2)(C).

On July 27, 2018, former Senate Judiciary Committee Chairman Charles Grassley requested certain records from the National Archives related to Justice Kavanaugh's service in the White House Counsel's Office from 2001 to 2003.⁵ He did not, however, request any records related to Justice Kavanaugh's service as Staff Secretary from 2003 to 2006. Former Chairman Grassley later withdrew his request for Justice Kavanaugh's White House Counsel's Office records, noting that the Senate Judiciary Committee had received some (though not all) of the requested records during the Senate's confirmation process.⁶ The Senate Judiciary Committee received those records after they were processed by a private attorney, who indicated that he had withheld tens of thousands of documents as a result of his review.⁷

As a result of this process, the Senate Judiciary Committee received only a small fraction of Justice Kavanaugh's White House record before voting on his nomination. Nevertheless, we understand that the National Archives has now completed its processing of records related to Justice Kavanaugh's time in the White House Counsel's Office. Additionally, under the Presidential Records Act, Justice Kavanaugh's fuller White House record will begin to be made available to the American people in January 2021.

We now ask that the National Archives produce the records related to Justice Kavanaugh's service in the White House Counsel's Office, as originally requested by former Chairman Grassley, to the House Judiciary Committee. We further request that the Archives process and produce the same categories of records requested by former Chairman Grassley as they pertain to Justice Kavanaugh's tenure as White House Staff Secretary. Namely, we ask that you provide:

⁴ See, e.g., H.R. 464, the "Cameras in the Court Act," 115th Cong. (2017) (permitting television coverage of Supreme Court proceedings); H.R. 1025, the "Eyes on the Courts Act," 115th Cong. (2017) (permitting television and other media coverage of appellate court proceedings, including Supreme Court proceedings); H.R. 7140, the "Anti-Corruption and Public Integrity Act" §§ 401–404, 115th Cong. (2018) (requiring, *inter alia*, that the Code of Conduct for United States Judges apply to Supreme Court Justices; requiring increased disclosure of Justices' and judges' financial disclosures, conflicts of interest requiring disqualification, and speeches; and regulating judicial participation in privately-funded seminars); H.R. 1203, the "Judicial Transparency and Ethics Enhancement Act," 113th Cong. (2013) (creating an Office of Inspector General within the Judicial Branch); H.R. 862, the "Supreme Court Transparency and Disclosure Act," 112th Cong. (2011) (requiring that the Code of Conduct for United States Judges apply with respect to Supreme Court Justices; requiring Supreme Court Justices to disclose their reasons for disqualification in cases in which they deem themselves disqualified; and creating a process to review denials of motions for disqualification).

⁵ Letter from Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Patrick X. Mordente, George W. Bush Presidential Library and Museum (July 27, 2018) (enclosed).

⁶ Letter from Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Gary M. Stern, General Counsel, National Archives and Records Administration (Oct. 9, 2018).

⁷ Letter from William A. Burck to Charles E. Grassley, Chairman, S. Comm. on the Judiciary (Aug. 31, 2018).

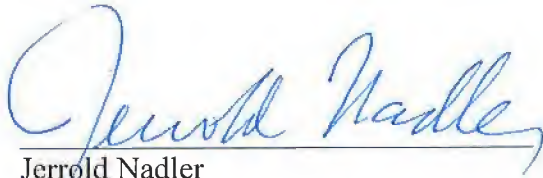
- (1) Emails sent to or received by Justice Kavanaugh, including emails on which he was a carbon copy or blind carbon copy recipient, during the period in which Justice Kavanaugh served as Staff Secretary, including any documents attached to such emails; and
- (2) The textual records contained in Justice Kavanaugh's office files from the period during which he served as Staff Secretary.

Please produce documents on a rolling basis, beginning with records requested by former Chairman Grassley related to Justice Kavanaugh's service in the White House Counsel's office. For the records related to Justice Kavanaugh's service as Staff Secretary, we welcome the opportunity to work with the Archives on finding aids and search terms to prioritize and streamline the production of documents.

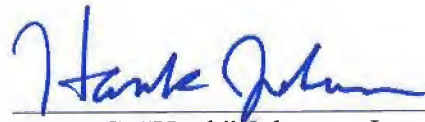
Please note that documents provided to Congress pursuant to 44 U.S.C. § 2205(2)(C), in contrast to those released to the public, are not governed by the Freedom of Information Act or the exemptions outlined in 5 U.S.C. § 552(b). If any document is withheld on the basis of any claim of privilege, please describe each document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each.

We recognize that reviewing the archives and producing these documents is a significant task, and thank you in advance for your efforts.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



Henry C. "Hank" Johnson, Jr.
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet
House Committee on the Judiciary